

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

May 24, 2007

DIVISION TWO

Court convened at 9:00 a.m.

Present: Boren, P.J., Doi Todd, J., Chavez, J. and Joyce Hatter, Deputy Clerk.

Each of the following:

B195300 In re: Manuel S.
B194409 People v. Phoenix
B194876 In re: David M.
B190287 People v. England
B189936 People v. Ramos
B189404 People v. Dunham

Argument waived, cause submitted.

B189889 Vincent Salazar
 v.
 Interland, Inc., et al.

Merits:

Argued by Martin Berman for appellant and by Phillip Graves for respondents. Cause submitted.

DIVISION TWO (continued)

B191760 Mutual Protection Trust, et al.
 v.
 Villar

Merits:

Argued by Roy Weatherup for appellants and by Jack Ormes for respondent. Cause submitted.

B185692 Joseph Latourelle
 v.
 Jerianne Latourelle

Merits:

Argued by Joseph LaTourelle, in propria persona as appellant and by Robert Lipscomb for appellant Jerianne LaTourelle. Cause submitted.

Court adjourned.

B190062 William DePalma
 v.
 Sonia Rodriguez

Filed order certifying opinion for publication.

DIVISION THREE

B188811 People

(Not for Publication)

v.

Javier A. Olmos

The conviction on count 2, for unlawfully driving or taking a vehicle (Veh. Code, § 10851), is ordered dismissed. For the reasons stated, the remainder of the judgment is reversed and the cause is remanded with directions to the trial court to conduct an in camera hearing on Olmos's Pitchess motion consistent with this opinion. If the hearing reveals no discoverable information in Officer Lindsey's personnel file which would lead to admissible evidence helpful to appellant's defense, the trial court shall reinstate the original judgment and sentence on count 1, which shall stand affirmed. If the in camera hearing reveals discoverable information bearing on the officer's honesty which could lead to admissible evidence helpful to appellant in defense of the charge, the trial court shall (1) disclose the names, addresses, and telephone numbers of individuals who have witnessed, or have previously filed complaints about, similar misconduct relating to the officer's honesty; and (2) allow appellant an opportunity to demonstrate prejudice. If appellant is thereafter able to demonstrate prejudice, the trial court shall order a new trial; if he is unable to demonstrate prejudice, the conviction on count 1 is ordered reinstated, and the judgment and sentence on count 1 shall stand affirmed.

Aldrich, J.

We concur: Croskey, Acting P.J.
Kitching, J.

DIVISION THREE (continued)

B197193 In re Henry Richard Gray (Certified for Publication)
on
Habeas Corpus

The Governor's decision reversing the 2005 Board decision finding Gray suitable for parole and setting a parole date is vacated. Gray's petition for a writ of habeas corpus is granted. As in Smith I, supra, 109 Cal.App.4th at page 507; Scott, supra, 133 Cal.App.4th at page 604; and Elkins, supra, 144 Cal.App.4th at page 503, the Board is ordered to release Gray forthwith pursuant to the conditions set forth in the January 27, 2005 decision by the Board. Considering that Gray's release by the Board would have been final in February 2005, well over two years ago, and in the interests of justice, this opinion shall be final as to this court immediately. (Cal. Rules of Court, rule 8.264 (b)(3).)

Kitching, J.

We concur: Klein, P.J.
Aldrich, J.

B191272 Delgado (Certified for Publication)
v.
Interinsurance Exchange of the Automobile Club of Southern California

The judgment of dismissal is reversed. The matter is remanded with directions to conduct further proceedings not inconsistent with the views expressed herein. Delgado shall recover his costs on appeal.

Aldrich, J.

We concur: Klein, P.J.
Croskey, J.

DIVISION THREE (continued)

B181989 Fassberg Construction Company (Certified for Partial Publication)
v.
Housing Authority of The City of Los Angeles

The judgment is affirmed as to the denial of relief to Fassberg on the complaint. The judgment is reversed as to the cross-complaint by the Housing Authority with directions to the superior court to (1) conduct a new trial on the cross-complaint limited to determining the number of false claims, if any, the amount of damages resulting from false claims and from any false records or statements in connection with false claims, and the appropriate civil penalty; (2) determine whether the election of remedies doctrine precludes the Housing Authority from seeking to recover in the new trial compensatory and punitive damages for misrepresentation and, if the Housing Authority is not precluded, conduct a new trial on those issues; (3) include in the judgment on the cross-complaint to be entered at the conclusion of the proceedings on remand a reduced award of damages to the Housing Authority for breach of contract in the amount of \$701,282.05 (\$1,104,000 - \$402,717.95 = \$701,282.05), and an award to Fassberg of \$1,310,036.47 as the full amount of the retention proceeds; (4) reconsider its determination that the Housing Authority is the prevailing party for purposes of an attorney fee award under Public Contract Code section 7107, subdivision (f); and (5) reconsider the issue of the Housing Authority's right to recover expert witness fees under Code of Civil Procedure, section 998, subdivision (c)(1). The order denying Fassberg's motion for partial judgment notwithstanding the verdict is affirmed. Each party shall bear its own costs on appeal.

Croskey, J.

We concur: Klein, P.J.
Aldrich, J.

DIVISION FIVE

B191267 Calvin Franklin (Certified for Publication)

v.

The Monadnock Company, et al

The order of the trial court dismissing the first amended complaint with prejudice is reversed. Plaintiff is awarded his costs on appeal.

Mosk, J.

We concur: Turner, P.J.
Kriegler, J.

B186084 Terrie Hutton

v.

Herbert Hafif

Filed order denying petition for rehearing.

DIVISION SIX

B190448 Collins (Not for Publication)

v.

Lebard

The judgment is affirmed. Costs are awarded to respondent.

Coffee, J.

We concur: Yegan, Acting P.J.
Perren, J.

DIVISION SIX (continued)

B194937 People (Not for Publication)
v.
Wiehl

The judgment is affirmed.

Coffee, J.

We concur: Gilbert, P.J.
Perren, J.

B188957 People (Not for Publication)
v.
Zambrano

The judgment is affirmed.

Coffee, J.

We concur: Yegan, Acting P.J.
Perren, J.

B192841 Hardy (Not for Publication)
v.
Jonathan Paul Eyewear

The judgment (order granting anti-SLAPP motion) is affirmed. JP Eyewear is awarded attorney's fees and costs on appeal. (§ 425.16, subd. (c); *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1119.)

Yegan, J.

We concur: Gilbert, P.J.
 Perren, J.

May 24, 2007 (Continued)

DIVISION SIX (continued)

B186733 People
 v.
 Gonzalez

Filed order denying petition for rehearing.